

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Protest Procedures for Award of Contracts

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Purpose

To establish a procedure for the resolution of Contract award protests.

Background

The primary objective of the County's Contract award process is to assure that Contracts are awarded to the provider of services or materials that is determined to be most advantageous to the County, with price and other factors considered. On occasion, participants in the Contract award process may protest a Contract award. This policy establishes the procedure to be followed for all County Formal Procurements, unless an alternate process is identified in the procurement, to resolve Contract award protests.

In the award of Contracts through Formal Procurements, the County utilizes either (i) procurement by Formal Bidding, or (ii) Competitive Negotiations, or (iii) Qualifications-Based Selection; each of these selection processes is defined under the section titled "Definitions" below. The distinctions between these processes must be taken into account in reviewing any protest.

Policy

It is the policy of the Board of Supervisors that a procedure be established that will provide an administrative remedy for resolving Contract award protests. A Contract shall not be awarded prior to resolution of the protest unless the Chief Administrative Officer determines that awarding a Contract is in the County's best interest. This policy applies to County Formal Procurements. Unless otherwise specified in the procurement, Informal Procurements are not subject to this policy. In procurements utilizing Formal Bidding, it shall not be a valid basis for protest under this policy to allege that the County incorrectly found an Offeror to be either "non-responsible" or "responsible." A determination of economy and efficiency pursuant to Charter Sections 703.10 and 916 shall not be subject to this protest procedure.

Definitions

CAO - The Chief Administrative Officer of the County of San Diego, or any individual(s) designated by the Chief Administrative Officer to perform the Chief Administrative Officer's functions under this policy.

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Competitive Negotiations - Competitive negotiations are normally initiated by a "request for proposal" (RFP). This method of selection is used to procure material or services in those cases where it is impossible or impractical to define specifications sufficiently to allow Formal Bidding, with a Contract award going to that Offeror whose proposal is determined to be most advantageous to the County when both price and other relevant factors are considered.

Contract - Any contract to which the County of San Diego or a special district or authority governed by the Board of Supervisors is, or will be, a party, with the exception of the following:

1. A contract, which is subject to an appeal procedure for its award, prescribed by a funding source such as the State or federal government.
2. A contract with another public agency.
3. Revenue contracts or any contract involving a transfer of an interest in real property including, but not limited to, a lease or contract for sale.
4. A contract awarded on a non-competitive basis or by an Informal Procurement process.
5. Any Formal Procurement cancelled by the County prior to award.
6. Any contract awarded by County Counsel pursuant to its authority under the Administrative Code of the County of San Diego.

Contracting Office - The County office that issued the solicitation.

Contracting Officer - That County officer responsible for issuing the solicitation, as identified in the County's solicitation package, and for awarding the resulting Contract.

Formal Bidding - Formal bidding, known as a "request for bid" (RFB), is used to acquire materials or services in those cases where existing specifications are sufficiently defined to allow a contract award to be made based on price alone to the "lowest responsive and responsible" bidder. In the context of formal bidding, "responsibility" refers to the fitness, quality, and capacity of the bidder to satisfactorily perform the work. "Responsibility" does not refer to specific bid requirements where a bidder must meet certain requirements, including, but not limited to, market experience (e.g., continuous years of

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providing service), minimum financial capitalization, and past experience performing similar work. These factors would go to the bidders' "responsiveness." Formal bidding includes the "Two-Step Procurement" process as defined below.

Informal Procurements - All procurements that consist of the following: (i) All P-card procurements; (ii) all procurements of under \$250,000, unless otherwise specified in the procurement document.

Interested Parties - For the purpose of this policy, Interested Parties are defined as:

1. The County department, office, or project manager procuring the subject service or materiel.
2. The Purchasing Agent or the Purchasing Agent's designated representative.
3. An Offeror filing a protest.
4. An Offeror who has been notified of the County's intent to award the Contract to that Offeror.

Managed Competition - A competitive procurement in which a County department competes to provide a service.

Offeror - The vendor or contractor submitting a "bid" in response to an RFB or a "proposal" in response to an RFP; however, the County, its departments, officers, or employees shall not be considered to be an "Offeror" for purposes of this policy when competing as part of a Managed Competition.

Protestor - An Offeror who files a protest of a Contract award in accordance with the provisions of this Board Policy.

Qualifications-Based Selection - A method of competitive procurement under authority of Board Policy F-40 "Procuring Architectural, Engineering, and Related Professional Services.

Two-Step Procurement - A method of procurement designed to promote maximum competition when available specifications are not sufficiently definite to determine which firms or individuals should receive an RFB. The first step of a two-step procurement consists of a request for submission of a technical proposal, and if necessary, discussion

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of the technical proposal, without pricing, to determine the acceptability of services or materiel offered. Negotiations may be required and conducted in this first step to develop and determine the adequacy of the technical proposals. The second step consists of a RFB issued only to those Offerors who submitted an acceptable technical proposal in step one.

Protest Requirements and Procedure

1. Standing to Protest - Protests shall be filed only by an Offeror.
2. Grounds for Protest - Protests shall be based only upon one or both of the following grounds:
 - a. The County failed to follow the procedures and adhere to requirements set forth in the solicitation or any addendum thereto.
 - b. The Protestor alleges misconduct or impropriety by County officials or evaluation team members.
3. Time for Filing a Protest
 - a. A protest shall be filed on the earliest of the following dates: (i) within five business days after a notice of Intent to award the contract has been posted in a public place in the County's Contracting Office or County Internet website, (ii) within five business days after the County provides notification that the proposal is no longer under consideration, or (iii) by noon on the day before the Board of Supervisors is scheduled to consider the matter.
 - b. In a Managed Competition, a protest shall be filed by an Offeror within five working days of the posting of the notice of selected proposal in a public place in the County's Contracting Office or County Internet website.
 - c. In a two-step procurement, a protest of step one shall be filed within five working days of the public posting in the County's Contracting Office or County Internet website of the notice of the vendors selected to continue to step two of the procurement. A protest of step two of the procurement shall be governed by the provisions set forth in Section 3, (a) above, as appropriate.

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4. Required Form of Protest

a. All protests shall be made in writing, containing the information listed below, and shall be filed with the Contracting Office identified in the solicitation package. Protests shall contain the following information:

1. The name, address, and telephone and facsimile numbers of the Protestor;
2. The signature of the Protestor or its representative;
3. The contracting agency and the solicitation and/or contract number;
4. Identification of the ground or grounds of protest set forth above in Section 2, "Grounds for Protest," with supporting facts and documentation;
5. All information establishing that the Protestor is an Offeror for the purpose of filing a protest;
6. The form of relief requested.

b. Protest submissions should be concise and logically arranged, but no formal briefs or other technical forms of pleading or motion are required. Supporting documentation may include, but is not limited to, the RFP or RFB and addendum, correspondence, and declarations. Protests of different procurements shall be filed separately.

5. Informal Resolution Process - The procuring department and Contracting Office will attempt to resolve protests to the satisfaction of all parties prior to forwarding to the CAO. The County Contracting Office will notify Interested Parties if the protest is resolved informally.

6. Summary Dismissal of Protest - The CAO may summarily dismiss a protest, or specific protest allegations, at any time that the CAO determines that the protest raises issues beyond the scope of this protest procedure as set forth above in Section 2, "Grounds for Protest;" is untimely, frivolous, or without merit; is not submitted in the required form of protest, as set forth above in Section 4,

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"Required Form of Protest;" or is submitted by a non-Offeror. In such cases, a notice of summary dismissal will be furnished to the Interested Parties.

7. Decision by the CAO Based on Written Submissions Only - In reaching a decision on the merits of a protest, the CAO may consider relevant documentation submitted by the Protestor. If the CAO wishes to have additional information submitted by the Protestor that was not included in the protest or documentation from other Interested Parties, the CAO will make a request specifying the information sought and time for submittal. Submissions of additional information that have not been specifically requested by the CAO will not be considered. The CAO will not conduct a "hearing" nor consider oral testimony. The CAO will issue a written decision containing the basis of the decision within 30 days after a protest has been filed with the CAO; however, the time for decision may be extended by the CAO. If the CAO requests additional documentation from the Protestor or other Interested Parties, an additional 15 days will automatically be added to the time for decision. A copy of the decision will be furnished to Interested Parties. The decision shall be final with no provision for reconsideration.

8. Decision by the CAO Following Discretionary Oral Presentation

In the sole discretion of the CAO, the CAO may elect to provide an opportunity for the Protestor to make an oral presentation pertaining to the protest. Oral presentations shall be conducted in accordance with the following procedure:

a. Notice of Oral Presentation - The CAO will set a date, time, and place for an oral presentation. Written notice will be provided to Interested Parties not less than five calendar days in advance of the oral presentation unless it is agreeable to all parties that an earlier date be established. Continuances may be granted by the CAO for good cause.

b. Guidelines for Oral Presentation - Oral presentations are informal in nature and shall be made by the Protestor or its authorized representative. The CAO will determine how the oral presentations will be conducted and set time limits for the presentation. The CAO may allow the Protestor to comment on the written documentation and argue its position. The CAO may request additional documentation prior to or during the oral presentation. Unless requested, additional documentation shall not be accepted. Witnesses shall not be called. Technical rules of evidence shall

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not apply. The CAO may question Interested Parties or provide an opportunity for Interested Parties to make an oral presentation.

c. Record of Oral Presentation - Any Interested Party may request, and in the CAO's sole discretion, the CAO may approve or disapprove of recording of the presentation. If the CAO allows the presentation to be recorded, the Interested Party requesting that the presentation be recorded must pay the cost of recording, including the cost to distribute copies of the recording to the CAO and other Interested Parties. There shall be no cost to the County.

d. Decisions - The CAO will issue a written decision within 30 days of the oral presentation; however, the time for decision may be extended by the CAO. A copy of the decision will be furnished to the Interested Parties. The decision will be final with no provision for reconsideration.

9. Scope of Decision - The scope of the CAO's decision shall be limited to whether one or more of the two grounds for protest set forth above in Section 2, "Grounds for Protest," was sustained or denied.

10. Protest Remedies - If the CAO sustains a protest in whole or in part, the CAO shall have the sole discretion to determine an appropriate remedy.

11. Effect on Contracts - The failure of a County employee or department to comply with the provisions stated in this Board Policy shall in no way affect the validity of any contract entered into by the County.

Sunset Date

This policy will be reviewed for continuance by 12-31-2013.

Board Action

05-15-84 (27)

08-16-88 (6)

12-12-89 (49)

06-5-90 (43)

10-23-90 (45)

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05-15-96 (11)
12-08-98 (53)
01-28-2003 (16)
02-27-2007 (9)

CAO Reference

1. Department of Purchasing and Contracting
2. County Counsel